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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.889 OF 2004

WITH

INCOME TAX APPEAL NO.888 OF 2004

The Commissioner of Income Tax ..Appellant.

V/s.

M/s.Karsandas Mavji ..Respondent.

Mr.A.S.Rao for appellant.

Mr.A.K.Jasani for respondent.

CORAM : F.I.REBELLO AND
J.P.DEVADHAR, JJ.

DATED : 16TH OCTOBER, 2007.

P.C. :-

1. These two appeals are filed by the revenue against the common order passed by the I.T.A.T. on 23/1/2004 relating to the assessment year 1992-93 and A.Y. 1993-94.

2. The common questions of law raised in these two appears are:-

1) Whether on the facts and circumstances of the case and in law, the I.T.A.T. was correct in holding that the gain arising on account of foreign exchange fluctuation of earlier years was includable in current year export turnover

for the purpose of computing deduction under section 80HHC of the Income Tax Act, 1961 ?

2) Whether on the facts and in the circumstances of the case and in law, the I.T.A.T. was correct in holding that the central excise duty refund receipts primarily cropped up because of export activity, hence deduction under section 80HHC were to be granted on such refund ? "

3. As regards question No.2 is concerned, the counsel on both the sides agree that the issue is covered by the Judgment of this Court in the case of **Alfa Laval India Ltd. V/s. Deputy Commissioner of Income-Tax** reported in **266 I.T.R. 418** in favour of the assessee and against the revenue.

4. As regards the first question is concerned in the assessment year in question, the assessee had claimed relief under section 80HHC of the Income Tax Act, 1961 (‘Act’ for short). The assessee had computed the ‘export turnover’ by including the amount of gains received by the assessee on account of foreign exchange fluctuations in respect of the exports effected during the earlier years. The assessing officer took the view that the gains due to fluctuations in foreign exchange did not pertain to exports made by the assessee during the year in question and accordingly reduced the gains received due to foreign exchange fluctuations from the ‘export turnover’ of the year in question while

computing the deduction under section 80HHC of the Income Tax Act.

5. On appeal filed by the assessee, the C.I.T. (A) held that the export proceeds is a quantum of money which the assessee actually realises. The C.I.T.(A) held that where any amount is outstanding at the end of the year, it is converted into rupee at the rate prevalent at the year end and in such a case the gain or loss arises directly on account of export and hence the gain or loss forms part of the export proceeds. Accordingly, the C.I.T. (A) held that the gain on account of fluctuation in foreign exchange rate cannot be reduced from the export turnover. On further appeal filed by the revenue, the I.T.A.T. upheld the order of the C.I.T. (A). Against the said order, the present appeal is filed.

6. It is contended on behalf of the revenue that there is no direct nexus between the gains arising out of the foreign exchange fluctuation and the export activity of the assessee in the year under consideration. In this connection reliance is placed on the decision of the Apex Court in the case of **Commissioner of Income Tax V/s. Sterling Foods** reported in **237 I.T.R. 579**.

7. We do not find any merit in the contention raised by the revenue. Under section 80HHC the term ‘export turnover’ means the sale proceeds received by the assessee in respect of the export effected by it. Therefore, the amount received on account of fluctuation in foreign exchange rate would be the sale proceeds received by the assessee and hence includible in the export turnover for computing deduction under section 80 HHC. Decision of the Apex Court in the case of Sterling Foods has no application to the facts of the present case, because, in that case the issue related to profits from sale of import entitlements, whereas in the present case, the issue relates to the gains arising due to fluctuation in foreign exchange rates which is nothing but additional sale proceeds received by the assessee on the goods exported. Therefore, the above decision of the Apex Court is wholly distinguishable on facts.

8. In this view of the matter, in our opinion, no question of law arise from the order of the Tribunal and accordingly the appeals are dismissed with no order as to the cost.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)